IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 494 of 1987

with

CRIMINAL APPEAL No 469 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VASUDEV SHARMA,OF RAJU ENTERPRISE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 494 of 1987

MR KV SHELAT for the Appellant

MR MA BUKHARI, APP, for Respondent No. 1-2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/08/2001

ORAL JUDGEMENT

1. This appeal arises out of a judgment and order rendered by the learned Special Judge, City Civil and Sessions Court, Court No.7, Ahmedabad, on June 30, 1987,

in Special Case No.44 of 1986, convicting the present appellant of the charges for breach of provisions of Section 3 of the Essential Commodities Act punishable under Section 7 of the said Act and sentencing him to undergo simple imprisonment for a period of three months and to pay a fine of Rs.100/- (in default to further undergo imprisonment for a period of one month).

2. The facts, in nutshell, are that Chief Supply Inspector of Civil Supplies Department, Mr. Jitendra Ratilal Tagat received infromation that in Dani Limbda area kerosene is illegally sold. He, therefore, arranged a watch in that area. It was noticed that one person was carrying certain plastic containers containing kerosene in a peddal rickshaw towards Narol side. He moved towards Ayurved Hospital. The Supply Inspector with his team followed him. The peddal rickshaw went inside Raju Enterprises. The team, therefore, kept a watch from a distance. The containers were emptied in drums. The team, therefore, went inside the factory. On inquiry with a person who was standing near the containers/ barrels, it was found that the gentleman was one Vasudev Sharma. The team introduced themselves. They found that eight containers were emptied in the barrels whereas four containers were still in the peddal rickshaw. The man plying the peddal rickshaw was there. He gave his name as Rahemtulla. The man in the factory, i.e. Vasudev Sharma, as well as Rehamtulla were inquired of as to whether they have any licence, pass or permit for the transasction, but they had none. It was also found that the kerosene was sold by Rehamtulla and purchased by Vasudev Sharma at Rs.2.10 per litre as against the controlled price of Rs.2.00 per litre. The total quantity of 440 litres was seized. Statements were recorded. Ultimately, the complaint came to be lodged, plea was recorded and charges were framed, to which the accused persons pleaded not guilty. The trial was proceeded with and considering the evidence, the learned Trial Judge came to a conclusion that the charges were successfully established by the prosecution. He, therefore, convicted both the accused persons and sentenced them as above.

2.1 Accused-Rehamtulla Pirmohmad Shaikh preferred Criminal Appeal No.469 of 1987 whereas accused Vasudev preferred present appeal. The appeal of accused-Rehamtulla came to be dismissed on July 29, 1987. A Special Leave Petition was preferred before the Apex Court being Special Leave Petition (Criminal) No.2342 of 1987 and appeal was registered as Criminal Appeal No.155 of 1994 before the Apex Court.

3. Learned advocate, Mr. Shelat, appearing for the appellant has taken this Court through the record and proceedings as well as the judgment and order impugned herein. He has tried to assail the judgment and order impugned herein, but in all fairness, has to concede that all that he can do is to claim parity with the case of Rehamtulla rather than assailing the judgment on merits. He has drawn attention of this Court to the order passed in the Criminal Appeal by the Apex Court on March 1, 1994, wherein considering the fact that the appellant before Their Lordships was admitted to bail and remained on bail for six years or more and considering the fact that the said appellant was a petty hawker and not a previous offender, his conviction was confirmed but his sentence was reduced to the period he had already undergone and the fine was enhanced from Rs.100/- to Rs.300/-. It was also directed that, in event of default in payment of fine of Rs.300/-, the appellant shall suffer rigorous imprisonment for one month. Mr. Shelat submitted that, it is true that in the facts of that peculiar case, the Apex Court has modified the sentence. He submitted that the present appellant was the co-accused. He was only an employee of the factory and was, therefore,working on behalf of the employer. There was no intention of profiteering out of this transaction. The accused has been on bail all throughout. He, however, was in custody from 5.9.1986 to 21.06.1986. The offence is of 12th March, 1985. Considering all these aspects, Mr. Shelat submitted that the case of the present appellant may be considered as one at par with that of the co-accused-Rehamtulla and similar modification may be made in the instant case also.

4. Mr. Bukhari, learned Additional Public Prosecutor, has opposed this appeal.

5. Having regard to the facts of the case, when Mr. Shelat has, in all fairness, not challenged the conviction part, the only question this Court is required to address is the quantum of punishment.

6. The appellant has been sentenced to suffer simple imprisonment for three months and to pay a fine of Rs.100/-. The substantive sentence is the minimum prescribed under the law as was the case with Rehamtulla. It is not in dispute that the appellant was an employee in the factory, as a Clerk, as is apparent from the Panchnama placed on record. It is also a part of the record that, as per the statement made by the present appellant, at the time of the raid, the said kerosene was

purchased for supplying to the employees of the factory. The element of profiteering, therefore, is absent. In the opinion of this Court, therefore, the case of the present appellant can be considered in substance as one at par with the case of his co-accused Rehamtulla. Rehamtulla was a hawker and the appellant is a Clerk. Rehamtulla sold the kerosene at a little higher price to earn out of it whereas this man has purchased kerosene on a higher price for distribution to the employees at the instance of the employer who has not been prosecuted and, therefore, to some extent, the appellant's case is on a better footing from the view point of the appellant. The appeal has been pending since 1987, i.e. almost 14 years from today and considering the order passed by the Apex Court in the case of Rehamtulla, the co-accused, this appeal can be partly allowed by confirming the conviction and reducing the substantive sentence to the sentence already undergone by the appellant, i.e. from 5.9.1986 to 21.10.1986. The fine is enhanced, however, to Rs300/-. In event of default in payment of fine, he shall undergo rigorous imprisonment for one month. Bail bond stands cancelled. The appeal, therefore, stands partly allowed.

[A. L. DAVE, J.]

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